

EXHIBIT A

FILED
CIVIL BUSINESS OFFICE
CENTRAL DIVISION

2012 JUN -5 AM 9: 22

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ALEX MATHESON, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

GAMESTOP, INC., a Minnesota
Corporation; and Does 1 through 50,
inclusive,

Defendants.

Case No. 37-2012-00098353-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200, *et seq.*;

2. FAILURE TO PAY REGULAR AND
OVERTIME WAGES IN VIOLATION
OF CAL. LAB. CODE §§ 510 & 1194, *et*
seq.; and,

3. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE §
226.

DEMAND FOR A JURY TRIAL

1 Plaintiff Alex Matheson ("PLAINTIFF"), an individual, on behalf of himself and all
 2 other similarly situated current and former employees, alleges on information and belief, except
 3 for his own acts and knowledge which are based on personal knowledge, the following:

4 5 **THE PARTIES**

6 1. Defendant Gamestop, Inc. ("GAMESTOP" or "DEFENDANT") is a Minnesota
 7 Corporation with its principal place of business located in Grapevine, Texas. At all relevant
 8 times mentioned herein, GAMESTOP conducted and continues to conduct substantial business
 9 in the state of California.

10 2. GAMESTOP is the largest retailer of new and used games, hardware,
 11 entertainment software, and accessories. The company operates 6,700 stores in the U.S.,
 12 Europe, Australia, and Canada, including operating over 460 stores in the state of California.
 13 To service all of their stores, GAMESTOP employs over 71,000 employees.

14 3. Plaintiff Alex Matheson has been employed by GAMESTOP in San Diego
 15 County, California as a Senior Game Advisor since April of 2007 and has at all times relevant
 16 been classified by Gamestop as a non-exempt employee paid on an hourly basis. Plaintiff Alex
 17 Matheson continues to be employed in this position as of the filing of this Complaint.

18 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
 19 defined as all individuals who are or previously were employed by Defendant Gamestop, Inc.
 20 in California as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
 21 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
 22 determined by the Court (the "CALIFORNIA CLASS PERIOD").

23 5. During the CALIFORNIA CLASS PERIOD, GAMESTOP has not had in place
 24 a timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA
 25 CLASS Members for the actual number of hours these employees work each day, including
 26 overtime hours, that ensures no off the clock hours worked. Pursuant to the Industrial Welfare
 27 Commission Wage Orders, GAMESTOP is required to pay PLAINTIFF and CALIFORNIA
 28 CLASS Members for all hours worked, meaning the time during which an employee is subject

1 to the control of an employer, including all the time the employee is suffered or permitted to
2 work. GAMESTOP consistently requires PLAINTIFF and CALIFORNIA CLASS Members
3 to work off the clock without paying them for all the time they are under GAMESTOP's control
4 performing post-shift duties, specifically by failing to provide enough labor hours to accomplish
5 all the job tasks that GAMESTOP expects PLAINTIFF and CALIFORNIA CLASS Members
6 to complete on a daily and/or weekly basis. PLAINTIFF and CALIFORNIA CLASS Members
7 are ordered to clock out of GAMESTOP's timekeeping system, in order to perform additional
8 work for GAMESTOP as required to meet GAMESTOP's job requirements without additional
9 pay. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeit hours
10 worked by regularly working without their time being accurately recorded and without
11 compensation for all hours worked, including overtime hours. GAMESTOP's uniform policy
12 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all hours
13 worked, including overtime hours worked, is evidenced by GAMESTOP's business records.

14 6. As a result of GAMESTOP's failure to record all hours worked by the
15 PLAINTIFF and CALIFORNIA CLASS Members, the wage statements issued to PLAINTIFF
16 and other CALIFORNIA CLASS Members violate California law, and in particular, Labor
17 Code Section 226(a).

18 7. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
19 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
20 the CALIFORNIA CLASS PERIOD caused by GAMESTOP's uniform policy and practice
21 which fails to lawfully compensate these employees for all their hours worked, including
22 overtime hours worked. GAMESTOP's uniform policy and practice alleged herein is an
23 unlawful, unfair and deceptive business practice whereby GAMESTOP retained and continues
24 to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.
25 PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining
26 such conduct by GAMESTOP in the future, relief for the named PLAINTIFF and the other
27 members of the CALIFORNIA CLASS who have been economically injured by GAMESTOP's
28 past and current unlawful conduct, and all other appropriate legal and equitable relief.

1 8. GAMESTOP has different shifts with different non-exempt employees paid on
2 an hourly basis working during each shift. Although the specific time of each shift differs, the
3 hours spent working during the shifts are nearly identical in every way. Thus, PLAINTIFF's
4 and other CALIFORNIA CLASS Members' typical workweek requires them to perform work
5 in excess of eight (8) hours in a workday and forty (40) hours in a workweek. GAMESTOP
6 also routinely schedules PLAINTIFF and CALIFORNIA CLASS Members to perform work
7 alone for more than five (5) hours at GAMESTOP's retail stores. As a result of GAMESTOP's
8 uniform business practice of scheduling their employees to work alone at GAMESTOP's retail
9 stores for long periods of time, PLAINTIFF and CALIFORNIA CLASS Members are
10 effectively unable to take their meal and rest breaks as required by the Industrial Welfare
11 Commission Wage Orders and provisions of the California Labor Code because these
12 employees are not allowed to close the store during normal business hours to take a meal or rest
13 break.

14 9. The true names and capacities, whether individual, corporate, subsidiary,
15 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
16 unknown to the PLAINTIFF who therefore sues these Defendants by such fictitious names
17 pursuant to Cal. Civ. Proc. Code § 474. The PLAINTIFF will seek leave to amend this
18 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they
19 are ascertained. PLAINTIFF is informed and believes, and based upon that information and
20 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,
21 inclusive, are responsible in some manner for one or more of the events and happenings that
22 proximately caused the injuries and damages hereinafter alleged.

23 10. The agents, servants and/or employees of the Defendants and each of them
24 acting on behalf of the Defendants acted within the course and scope of his, her or its authority
25 as the agent, servant and/or employee of the Defendants, and personally participated in the
26 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
28 all Defendants are jointly and severally liable to the PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

3
4 **THE CONDUCT**

5 11. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues
6 to fail to correctly record and pay PLAINTIFF and the other members of the CALIFORNIA
7 CLASS for all hours worked, including their overtime hours worked. DEFENDANT
8 systematically, unlawfully and unilaterally fails to correctly record all hours worked by the
9 PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these
10 employees the correct compensation. As a result, the PLAINTIFF and the other members of
11 the CALIFORNIA CLASS forfeit wages due them for regularly working off the clock for
12 DEFENDANT without compensation for all hours worked, including overtime hours.
13 DEFENDANT's uniform policy and practice to not pay the members of the CALIFORNIA
14 CLASS the correct compensation for all hours worked, including overtime hours, in accordance
15 with applicable law is evidenced by DEFENDANT's business records.

16 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT has failed to
17 accurately record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS
18 for all hours worked, including overtime hours worked, after their scheduled shift ends.
19 DEFENDANT allocates a certain number of labor hours to each retail store. DEFENDANT
20 consistently and regularly advises PLAINTIFF and CALIFORNIA CLASS Members that each
21 retail store is not allowed to incur more labor hours than the number of labor hours budgeted
22 for that retail store during that time period. However, DEFENDANT consistently does not
23 allocate enough labor hours such that there is not enough time for PLAINTIFF and
24 CALIFORNIA CLASS Members to complete their required duties within the allocated labor
25 hours. DEFENDANT threatens the PLAINTIFF and CALIFORNIA CLASS Members with
26 discipline and/or other sanctions, including termination of their employment with
27 DEFENDANT if they are unable to complete their assigned tasks without incurring overtime
28 hours. As a result, DEFENDANT's uniform business practice requires PLAINTIFF and

1 CALIFORNIA CLASS Members to clock out of DEFENDANT's timekeeping system to stay
2 within the allotted hours and continue to work off the clock. Faced with discipline, including
3 termination, if they did not work off the clock in order to complete their assigned duties for
4 DEFENDANT, PLAINTIFF and the CALIFORNIA CLASS Members are compelled by
5 DEFENDANT's allocation policy to work off the clock. As a result, the PLAINTIFF and the
6 other members of the CALIFORNIA CLASS forfeit hours worked by regularly working after
7 the end of their scheduled shift after clocking out without their time worked on post-shift duties
8 being accurately recorded and without compensation being paid for all hours worked, including
9 overtime hours. DEFENDANT's conduct as alleged herein is willful, intentional and not in
10 good faith.

11 13. DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to
12 regularly perform work after these employees are clocked out of DEFENDANT's timekeeping
13 system. Specifically, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
14 CALIFORNIA CLASS Members are required to clock out of DEFENDANT's timekeeping
15 system and perform tasks related to completing daily business reports, conducting loss
16 prevention procedures, and depositing the monies collected at the retail store in the bank or
17 other deposit boxes inside the mall where these employees work for DEFENDANT. During the
18 CALIFORNIA CLASS PERIOD, when PLAINTIFF and CALIFORNIA CLASS Members
19 close out DEFENDANT's cash register, these employees are clocked out of DEFENDANT's
20 timekeeping system and are effectively precluded from correctly recording their time spent on
21 these post-shift duties that DEFENDANT requires them to perform. As a result,
22 DEFENDANT's employment practices caused the PLAINTIFF and the other members of the
23 CALIFORNIA CLASS to be unpaid during their employment with DEFENDANT after the
24 clocking out of the cash register because clocking out of the cash register does not end the work.
25 As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeit hours worked
26 by regularly working without their time being recorded and without compensation for all hours
27 worked, including overtime hours. DEFENDANT's uniform policy and practice not to pay
28 PLAINTIFF and other CALIFORNIA CLASS Members for all hours worked, including

1 overtime hours, is evidenced by DEFENDANT's business records.

2 14. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
4 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
5 fails to compensate the PLAINTIFF and the other members of the CALIFORNIA CLASS for
6 all hours worked, including overtime hours. This uniform policy and practice of DEFENDANT
7 is intended to purposefully avoid the payment of regular and overtime compensation as required
8 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
9 over competitors who complied with the law. To the extent equitable tolling operates to toll
10 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
11 PERIOD should be adjusted accordingly.

12 15. DEFENDANT also fails to provide the PLAINTIFF and the other members of
13 the CALIFORNIA CLASS with complete and accurate wage statements which fail to show,
14 among other things, the correct number of all hours worked, including, work performed in
15 excess of eight (8) hours in a workday and forty (40) hours in any workweek. Cal. Lab. Code
16 § 226 provides that every employer shall furnish each of his or her employees with an accurate
17 itemized wage statement in writing showing, among other things, gross wages earned and all
18 applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate. As a result, DEFENDANT provides the PLAINTIFF and the other
20 members of the CALIFORNIA CLASS with wage statements which violate Cal. Lab. Code §
21 226.

22 16. During the CALIFORNIA CLASS PERIOD, DEFENDANT's uniform company
23 policy and practice is to regularly schedule only one Gamestop employee in their retail stores
24 at any given time. DEFENDANT's company policy also mandates that at any given time at
25 least one of the employees working in their retail stores must be an employee in a key-holder
26 position. Employees who are not working in key-holder positions are restrained by
27 DEFENDANT from accessing locked merchandise displays and reconciling business
28 transactions and DEFENDANT's uniform company policy effectively prohibits employees who

1 are not in key-holder positions to be left alone at any given time in the store. As a result, unless
2 two key-holding employees are working in DEFENDANT's retail store at the same time, no
3 key-holding employee may leave the retail store because DEFENDANT's company policy
4 dictates that someone must be there to open merchandise cases and reconcile business
5 transactions and PLAINTIFF and the CALIFORNIA CLASS Members are not permitted to
6 close the store during normal business hours to take a meal or rest break.

7 17. DEFENDANT regularly schedules PLAINTIFF and CALIFORNIA CLASS
8 Members to perform work during shifts that last six (6) hours or longer. As described herein,
9 PLAINTIFF and CALIFORNIA CLASS Members are also required by DEFENDANT to work
10 alone, or with an employee that cannot be left alone in DEFENDANT's store, for the first five
11 (5) hours of their scheduled shift. As a result, PLAINTIFF and CALIFORNIA CLASS
12 Members are required to perform work as ordered by the DEFENDANT for more than five (5)
13 hours during a shift without receiving a meal or rest break as evidenced by daily time reports
14 for these employees. DEFENDANT has no policy in place to compensate these employees for
15 these missed meal or rest breaks as required by law. PLAINTIFF and the other non-exempt
16 employees paid on an hourly basis therefore forfeit meal and rest breaks without additional
17 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

18 18. By reason of this uniform conduct applicable to PLAINTIFF and all
19 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
20 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
21 (the "UCL"), by engaging in a company-wide policy and procedure which fails to accurately
22 record all hours worked, including overtime hours worked by the PLAINTIFF and other
23 CALIFORNIA CLASS Members. The proper recording of these employees' hours worked is
24 the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
25 obligation to meet this burden, DEFENDANT fails to correctly record and pay all required
26 regular and overtime compensation for work performed by the members of the CALIFORNIA
27 CLASS and violated the California Labor Code and regulations promulgated thereunder as
28 herein alleged.

1 19. Plaintiff Alex Matheson has worked for DEFENDANT since April of 2007 in
2 DEFENDANT's Carlsbad, California store. At all times relevant, PLAINTIFF has been
3 classified by DEFENDANT as a non-exempt, hourly employee who is paid \$9.50 per hour. At
4 the time PLAINTIFF began for working for DEFENDANT, PLAINTIFF was 16 years old and
5 a full-time, high school student. DEFENDANT required PLAINTIFF to sign a document
6 purporting to be an agreement to arbitrate employment-related claims as a mandatory term and
7 condition of employment when he was 16 years old. To the extent that DEFENDANT attempts
8 to enforce such an agreement, PLAINTIFF hereby formally disaffirms that there is any
9 enforceable agreement pursuant to California Family Code § 6710, and there was no lawful
10 consent. During the CALIFORNIA CLASS PERIOD, PLAINTIFF is also required to perform
11 work as ordered by the DEFENDANT for more than five (5) hours during a shift without
12 receiving a meal or rest break as evidenced by daily time reports for PLAINTIFF. PLAINTIFF
13 therefore forfeits meal and rest breaks without additional compensation and in accordance with
14 DEFENDANT's strict corporate policy and practice which does not provide for mandatory meal
15 and rest breaks. DEFENDANT also consistently requires PLAINTIFF to work off the clock
16 without paying him for all the time he is under DEFENDANT's control performing post-shift
17 duties, including, but not limited to conducting daily business transaction reports, completing
18 banking procedures on behalf of DEFENDANT, waiting for and submitting to loss prevention
19 inspections, and by failing to provide enough labor hours to accomplish all the job tasks that
20 DEFENDANT expects PLAINTIFF to complete on a daily and/or weekly basis. PLAINTIFF
21 clocks out of DEFENDANT's timekeeping system when the register is closed, but performs
22 additional work for DEFENDANT in order to meet DEFENDANT's job requirements as
23 ordered by DEFENDANT. As a result, the PLAINTIFF forfeits hours worked by regularly
24 working without his time being accurately recorded and without compensation for all hours
25 worked, including overtime hours. DEFENDANT also provides PLAINTIFF with a paystub
26 that fails to accurately display the correct amount of all hours worked by PLAINTIFF and the
27 correct amount of compensation for all his hours worked for certain pay periods in violation of
28 Cal. Lab. Code § 226(a).

JURISDICTION AND VENUE

20. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

21. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because the PLAINTIFF resides in this County and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

THE CALIFORNIA CLASS

22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by Defendant Gamestop, Inc. in California as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD").

23. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

24. The California Legislature has commanded that "all wages... ..earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays", and further that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the

1 regular rate of pay for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare
2 Commission (IWC), however, is statutorily authorized to “establish exemptions from the
3 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and
4 professional employees, provided [inter alia] that the employee is primarily engaged in duties
5 that meet the test of the exemption, [and] customarily and regularly exercises discretion and
6 independent judgment in performing those duties...” (Lab. Code § 510(a).) Neither the
7 PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
8 LABOR SUB-CLASS qualify for exemption from the above requirements.

9 25. DEFENDANT, as a matter of company policy, practice and procedure, and
10 in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
11 requirements, and the applicable provisions of California law, intentionally, knowingly, and
12 wilfully, engaged in a practice whereby DEFENDANT systematically fails to record all hours
13 worked by PLAINTIFF and other CALIFORNIA CLASS Members, fails to record these
14 employees’ missed meal and rest breaks, and fails to correctly record and pay regular and
15 overtime compensation for all hours worked by PLAINTIFF and the other members of the
16 CALIFORNIA CLASS, even though DEFENDANT enjoys the benefit of this work, requires
17 employees to perform this work and permits or suffers to permit this work.

18 26. DEFENDANT has the legal burden to establish that each and every
19 CALIFORNIA CLASS Member was paid for all hours worked, including overtime hours
20 worked. The DEFENDANT, however, as a matter of uniform and systematic policy and
21 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to
22 have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member
23 is paid correct compensation for all hours worked, so as to satisfy their burden. This common
24 business practice is applicable to each and every CALIFORNIA CLASS Member can be
25 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
26 Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not
27 elements of this claim.

28 27. At no time during the CALIFORNIA CLASS PERIOD was the compensation for

1 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
2 employee for all hours worked at the applicable rate, as required by California Labor Code §§
3 204 and 510, *et seq.*

4 28. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
5 CLASS Members is impracticable.

6 29. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
7 California law by:

- 8 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
9 §§ 17200 *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively
10 having in place company policies, practices and procedures that uniformly
11 and systematically failed to record and pay the PLAINTIFF and the other
12 members of the CALIFORNIA CLASS for all hours worked, including
13 overtime hours worked;
- 14 (b) Committing an act of unfair competition in violation of the UCL, by
15 unlawfully, unfairly, and/or deceptively having in place a company policy,
16 practice and procedure that fails to correctly calculate overtime
17 compensation due to PLAINTIFF and the members of the CALIFORNIA
18 CLASS;
- 19 (c) Committing an act of unfair competition in violation of the UCL, by
20 failing to provide the PLAINTIFF and the other members of the
21 CALIFORNIA CLASS with all legally required uninterrupted meal and
22 rest breaks;
- 23 (d) Committing an act of unfair competition in violation of the UCL, by
24 violating Cal. Lab. Code § 226(a), by failing to provide the PLAINTIFF
25 and the other members of the CALIFORNIA CLASS with an accurate
26 itemized statement in writing showing the gross wages earned, the net
27 wages earned, all applicable hourly rates in effect during the pay period
28 and the corresponding number of hours worked at each hourly rate by the

1 employee.

2 30. This Class Action meets the statutory prerequisites for the maintenance of a
3 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 4 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
5 that the joinder of all CALIFORNIA CLASS Members is impracticable
6 and the disposition of their claims as a class will benefit the parties and
7 the Court;
- 8 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
9 that are raised in this Complaint are common to the CALIFORNIA
10 CLASS will apply uniformly to every member of the CALIFORNIA
11 CLASS;
- 12 (c) The claims of the representative PLAINTIFF are typical of the claims of
13 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
14 other members of the CALIFORNIA CLASS, is a non-exempt employee
15 paid on an hourly basis who is subjected to the DEFENDANT's deceptive
16 practice and policy which fails to accurately record all hours worked and
17 fails to pay all wages due to the CALIFORNIA CLASS for all hours
18 worked by the CALIFORNIA CLASS and thereby systematically
19 underpays regular and overtime compensation to the CALIFORNIA
20 CLASS. PLAINTIFF sustained economic injury as a result of
21 DEFENDANT's employment practices. PLAINTIFF and the members of
22 the CALIFORNIA CLASS were and are similarly or identically harmed
23 by the same unlawful, deceptive, unfair and pervasive pattern of
24 misconduct engaged in by DEFENDANT; and,
- 25 (d) The representative PLAINTIFF will fairly and adequately represent and
26 protect the interest of the CALIFORNIA CLASS, and has retained
27 counsel who are competent and experienced in Class Action litigation.
28 There are no material conflicts between the claims of the representative

1 PLAINTIFF and the members of the CALIFORNIA CLASS that would
2 make class certification inappropriate. Counsel for the CALIFORNIA
3 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
4 Members.

5 31. In addition to meeting the statutory prerequisites to a Class Action, this action
6 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

7 (a) Without class certification and determination of declaratory, injunctive,
8 statutory and other legal questions within the class format, prosecution of
9 separate actions by individual members of the CALIFORNIA CLASS will
10 create the risk of:

11 1) Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA CLASS which would establish
13 incompatible standards of conduct for the parties opposing the
14 CALIFORNIA CLASS; and/or,

15 2) Adjudication with respect to individual members of the
16 CALIFORNIA CLASS which would as a practical matter be
17 dispositive of interests of the other members not party to the
18 adjudication or substantially impair or impede their ability to
19 protect their interests.

20 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
21 act on grounds generally applicable to the CALIFORNIA CLASS, making
22 appropriate class-wide relief with respect to the CALIFORNIA CLASS
23 as a whole in that DEFENDANT uniformly fails to pay all wages due.
24 Including overtime wages for all overtime hours worked by the members
25 of the CALIFORNIA CLASS as required by law;

26 1) With respect to the First Cause of Action, the final relief on behalf
27 of the CALIFORNIA CLASS sought does not relate exclusively to
28

1 restitution because through this claim PLAINTIFF seeks
 2 declaratory relief holding that the DEFENDANT's policy and
 3 practices constitute unfair competition, along with declaratory
 4 relief, injunctive relief, and incidental equitable relief as may be
 5 necessary to prevent and remedy the conduct declared to constitute
 6 unfair competition;

7 (c) Common questions of law and fact exist as to the members of the
 8 CALIFORNIA CLASS, with respect to the practices and violations of
 9 California law as listed above, and predominate over any question
 10 affecting only individual CALIFORNIA CLASS Members, and a Class
 11 Action is superior to other available methods for the fair and efficient
 12 adjudication of the controversy, including consideration of:

13 1) The interests of the members of the CALIFORNIA CLASS in
 14 individually controlling the prosecution or defense of separate
 15 actions in that the substantial expense of individual actions will be
 16 avoided to recover the relatively small amount of economic losses
 17 sustained by the individual CALIFORNIA CLASS Members when
 18 compared to the substantial expense and burden of individual
 19 prosecution of this litigation;

20 2) Class certification will obviate the need for unduly duplicative
 21 litigation that would create the risk of:

22 A. Inconsistent or varying adjudications with respect to
 23 individual members of the CALIFORNIA CLASS, which
 24 would establish incompatible standards of conduct for the
 25 DEFENDANT; and/or,

26 B. Adjudications with respect to individual members of the
 27 CALIFORNIA CLASS would as a practical matter be
 28 dispositive of the interests of the other members not parties

1 to the adjudication or substantially impair or impede their
2 ability to protect their interests;

- 3 3) In the context of wage litigation because a substantial number of
4 individual CALIFORNIA CLASS Members will avoid asserting
5 their legal rights out of fear of retaliation by DEFENDANT, which
6 may adversely affect an individual's job with DEFENDANT or
7 with a subsequent employer, the Class Action is the only means to
8 assert their claims through a representative; and,
9 4) A class action is superior to other available methods for the fair
10 and efficient adjudication of this litigation because class treatment
11 will obviate the need for unduly and unnecessary duplicative
12 litigation that is likely to result in the absence of certification of
13 this action pursuant to Cal. Code of Civ. Proc. § 382.

14 32. This Court should permit this action to be maintained as a Class Action
15 pursuant to Cal. Code of Civ. Proc. § 382 because:

- 16 (a) The questions of law and fact common to the CALIFORNIA CLASS
17 predominate over any question affecting only individual CALIFORNIA
18 CLASS Members because the DEFENDANT's employment practices are
19 uniformly and systematically applied with respect to the CALIFORNIA
20 CLASS;
21 (b) A Class Action is superior to any other available method for the fair and
22 efficient adjudication of the claims of the members of the CALIFORNIA
23 CLASS because in the context of employment litigation a substantial
24 number of individual CALIFORNIA CLASS Members will avoid
25 asserting their rights individually out of fear of retaliation or adverse
26 impact on their employment;
27 (c) The members of the CALIFORNIA CLASS are so numerous that it is
28 impractical to bring all members of the CALIFORNIA CLASS before the

1 Court;

- 2 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
 3 able to obtain effective and economic legal redress unless the action is
 4 maintained as a Class Action;
- 5 (e) There is a community of interest in obtaining appropriate legal and
 6 equitable relief for the acts of unfair competition, statutory violations and
 7 other improprieties, and in obtaining adequate compensation for the
 8 damages and injuries which DEFENDANT's actions have inflicted upon
 9 the CALIFORNIA CLASS;
- 10 (f) There is a community of interest in ensuring that the combined assets of
 11 DEFENDANT are sufficient to adequately compensate the members of
 12 the CALIFORNIA CLASS for the injuries sustained;
- 13 (g) DEFENDANT has acted or refused to act on grounds generally applicable
 14 to the CALIFORNIA CLASS, thereby making final class-wide relief
 15 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 16 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
 17 the business records of DEFENDANT. The CALIFORNIA CLASS
 18 consists of all individuals who are or previously were employed by
 19 DEFENDANT in California as non-exempt employees during the
 20 CALIFORNIA CLASS PERIOD; and,
- 21 (i) Class treatment provides manageable judicial treatment calculated to bring
 22 a efficient and rapid conclusion to all litigation of all wage and hour
 23 related claims arising out of the conduct of DEFENDANT as to the
 24 members of the CALIFORNIA CLASS.

25 33. DEFENDANT maintains records from which the Court can ascertain and
 26 identify by job title each of DEFENDANT's employees who have been systematically,
 27 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
 28 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include

1 any additional job titles of similarly situated employees when they have been identified.

2
3 **THE CALIFORNIA LABOR SUB-CLASS**

4 34. PLAINTIFF further brings the Second and Third Causes of Action on behalf of
5 a California sub-class, defined as all members of the CALIFORNIA CLASS who are or
6 previously were employed by DEFENDANT in California as non-exempt employees (the
7 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to
8 the filing of the complaint and ending on the date as determined by the Court (the
9 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.

10 35. DEFENDANT, as a matter of company policy, practice and procedure, and
11 in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
12 requirements, and the applicable provisions of California law, intentionally, knowingly, and
13 wilfully, engages in a practice whereby DEFENDANT fails to record all hours worked by the
14 PLAINTIFF and members of the CALIFORNIA LABOR SUB-CLASS, including overtime
15 hours, and fails to correctly provide compensation for all hours worked by the PLAINTIFF and
16 the other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT
17 enjoys the benefit of this work, requires employees to perform this work and permits or suffers
18 to permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
19 CLASS Members all wages due them to which these employees are entitled in order to unfairly
20 cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll
21 claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA
22 LABOR SUB-CLASS PERIOD should be adjusted accordingly.

23 36. DEFENDANT maintains records from which the Court can ascertain and
24 identify by name and job title, each of DEFENDANT's employees who have been
25 systematically, intentionally and uniformly subjected to DEFENDANT's company policy,
26 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint
27 to include any additional job titles of similarly situated employees when they have been
28 identified.

1 37. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
2 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

3 38. Common questions of law and fact exist as to members of the CALIFORNIA
4 LABOR SUB-CLASS, including, but not limited, to the following:

- 5 (a) Whether DEFENDANT unlawfully failed to correctly record and pay
6 regular overtime compensation to members of the CALIFORNIA LABOR
7 SUB-CLASS in violation of the California Labor Code and California
8 regulations and the applicable California Wage Order;
- 9 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
10 entitled to overtime compensation for all hours worked, including
11 overtime hours worked under the overtime pay requirements of California
12 law;
- 13 (c) Whether DEFENDANT's arbitration agreements violate Section 7 of the
14 National Labor Relations Act (29 U.S.C. § 157);
- 15 (d) Whether Plaintiff Alex Matheson, and those similarly situated, who were
16 minors when they signed arbitration agreements with DEFENDANT, may
17 disaffirm those agreements pursuant to California Family Code § 6710;
- 18 (e) Whether DEFENDANT instructed, programmed, or permitted employees
19 to state an incorrect number of hours worked;
- 20 (f) Whether DEFENDANT failed to maintain an immutable timekeeping
21 system so as to record true and accurate time records for the PLAINTIFF
22 and the other members of the CALIFORNIA LABOR SUB-CLASS;
- 23 (g) Whether DEFENDANT failed to provide the PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS with all legally
25 required uninterrupted meal and rest breaks;
- 26 (h) Whether DEFENDANT failed to provide the PLAINTIFF and the other
27 members of the CALIFORNIA LABOR SUB-CLASS with accurate
28 itemized wage statements;

- 1 (i) Whether DEFENDANT has engaged in unfair competition by the
- 2 above-listed conduct;
- 3 (j) The proper measure of damages and penalties owed to the members of the
- 4 CALIFORNIA LABOR SUB-CLASS; and,
- 5 (k) Whether DEFENDANT's conduct was willful.

6 39. DEFENDANT, as a matter of company policy, practice and procedure,
 7 fails to correctly record all hours worked by the PLAINTIFF and CALIFORNIA LABOR SUB-
 8 CLASS Members, fails to correctly pay compensation for all hours worked by the
 9 CALIFORNIA LABOR SUB-CLASS Members, and fails to provide accurate records of all
 10 hours worked, including overtime hours worked by these employees in violation of Cal. Lab.
 11 Code § 226. This business practice is uniformly applied to each and every member of the
 12 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
 13 adjudicated on a class-wide basis.

14 40. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
 15 under California law by:

- 16 (a) Violating Cal. Lab. Code §§ 510 & 1194, *et seq.*, by failing to accurately
- 17 pay the PLAINTIFF and the members of the CALIFORNIA LABOR
- 18 SUB-CLASS wages due for all hours worked, including overtime hours
- 19 worked for which DEFENDANT is liable pursuant to Cal. Lab. Code §
- 20 1194; and,
- 21 (b) Violating Cal. Lab. Code § 226, by failing to provide the PLAINTIFF and
- 22 the members of the CALIFORNIA LABOR SUB-CLASS with an
- 23 accurate itemized statement in writing showing all accurate and applicable
- 24 overtime rates in effect during the pay period and the corresponding
- 25 number of hours worked at each overtime rate by the employee.

26 41. This Class Action meets the statutory prerequisites for the maintenance of a
 27 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 28 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are

1 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
2 Members is impracticable and the disposition of their claims as a class
3 will benefit the parties and the Court;

4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
5 that are raised in this Complaint are common to the CALIFORNIA
6 LABOR SUB-CLASS and will apply uniformly to every member of the
7 CALIFORNIA LABOR SUB-CLASS;

8 (c) The claims of the representative PLAINTIFF are typical of the claims of
9 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
10 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
11 is a non-exempt employee paid on an hourly basis who is subjected to the
12 DEFENDANT's deceptive practice and policy which fails to correctly
13 record all hours worked and fails to pay all wages due to the
14 CALIFORNIA LABOR SUB-CLASS for all hours worked, including
15 overtime hours worked by the CALIFORNIA LABOR SUB-CLASS and
16 thereby systematically underpaid regular and overtime compensation to
17 the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained
18 economic injury as a result of DEFENDANT's employment practices.
19 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
20 CLASS were and are similarly or identically harmed by the same
21 unlawful, deceptive, unfair and pervasive pattern of misconduct engaged
22 in by DEFENDANT; and,

23 (d) The representative PLAINTIFF will fairly and adequately represent and
24 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
25 retained counsel who are competent and experienced in Class Action
26 litigation. There are no material conflicts between the claims of the
27 representative PLAINTIFF and the members of the CALIFORNIA
28 LABOR SUB-CLASS that would make class certification inappropriate.

1 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
2 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

3 42. In addition to meeting the statutory prerequisites to a Class Action, this action
4 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

5 (a) Without class certification and determination of declaratory, injunctive,
6 statutory and other legal questions within the class format, prosecution of
7 separate actions by individual members of the CALIFORNIA LABOR
8 SUB-CLASS will create the risk of:

- 9 1) Inconsistent or varying adjudications with respect to individual
10 members of the CALIFORNIA LABOR SUB-CLASS which
11 would establish incompatible standards of conduct for the parties
12 opposing the CALIFORNIA LABOR SUB-CLASS; or,
13 2) Adjudication with respect to individual members of the
14 CALIFORNIA LABOR SUB-CLASS which would as a practical
15 matter be dispositive of interests of the other members not party to
16 the adjudication or substantially impair or impede their ability to
17 protect their interests.

18 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
19 or refused to act on grounds generally applicable to the CALIFORNIA
20 LABOR SUB-CLASS, making appropriate class-wide relief with respect
21 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
22 DEFENDANT uniformly fails to pay all wages due. Including overtime
23 wages for all overtime hours worked by the members of the
24 CALIFORNIA LABOR SUB-CLASS as required by law;

25 (c) Common questions of law and fact predominate as to the members of the
26 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
27 violations of California Law as listed above, and predominate over any
28 question affecting only individual CALIFORNIA LABOR SUB-CLASS

1 Members, and a Class Action is superior to other available methods for
2 the fair and efficient adjudication of the controversy, including
3 consideration of:

- 4 1) The interests of the members of the CALIFORNIA LABOR SUB-
5 CLASS in individually controlling the prosecution or defense of
6 separate actions in that the substantial expense of individual
7 actions will be avoided to recover the relatively small amount of
8 economic losses sustained by the individual CALIFORNIA
9 LABOR SUB-CLASS Members when compared to the substantial
10 expense and burden of individual prosecution of this litigation;
11 2) Class certification will obviate the need for unduly duplicative
12 litigation that would create the risk of:
- 13 A. Inconsistent or varying adjudications with respect to
14 individual members of the CALIFORNIA LABOR SUB-
15 CLASS, which would establish incompatible standards of
16 conduct for the DEFENDANT; and/or,
17 B. Adjudications with respect to individual members of the
18 CALIFORNIA LABOR SUB-CLASS would as a practical
19 matter be dispositive of the interests of the other members
20 not parties to the adjudication or substantially impair or
21 impede their ability to protect their interests;
- 22 3) In the context of wage litigation because a substantial number of
23 individual CALIFORNIA LABOR SUB-CLASS Members will
24 avoid asserting their legal rights out of fear of retaliation by
25 DEFENDANT, which may adversely affect an individual's job
26 with DEFENDANT or with a subsequent employer, the Class
27 Action is the only means to assert their claims through a
28 representative; and,

- 1 4) A class action is superior to other available methods for the fair
2 and efficient adjudication of this litigation because class treatment
3 will obviate the need for unduly and unnecessary duplicative
4 litigation that is likely to result in the absence of certification of
5 this action pursuant to Cal. Code of Civ. Proc. § 382.

6 43. This Court should permit this action to be maintained as a Class Action
7 pursuant to Cal. Code of Civ. Proc. § 382 because:

- 8 (a) The questions of law and fact common to the CALIFORNIA LABOR
9 SUB-CLASS predominate over any question affecting only individual
10 CALIFORNIA LABOR SUB-CLASS Members;
11 (b) A Class Action is superior to any other available method for the fair and
12 efficient adjudication of the claims of the members of the CALIFORNIA
13 LABOR SUB-CLASS because in the context of employment litigation a
14 substantial number of individual CALIFORNIA LABOR SUB-CLASS
15 Members will avoid asserting their rights individually out of fear of
16 retaliation or adverse impact on their employment;
17 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
18 numerous that it is impractical to bring all members of the CALIFORNIA
19 LABOR SUB-CLASS before the Court;
20 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
21 Members, will not be able to obtain effective and economic legal redress
22 unless the action is maintained as a Class Action;
23 (e) There is a community of interest in obtaining appropriate legal and
24 equitable relief for the acts of unfair competition, statutory violations and
25 other improprieties, and in obtaining adequate compensation for the
26 damages and injuries which DEFENDANT's actions have inflicted upon
27 the CALIFORNIA LABOR SUB-CLASS;
28 (f) There is a community of interest in ensuring that the combined assets of

1 DEFENDANT are sufficient to adequately compensate the members of
2 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

3 (g) DEFENDANT has acted or refused to act on grounds generally applicable
4 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
5 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
6 CLASS as a whole;

7 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
8 ascertainable from the business records of DEFENDANT. The
9 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
10 CLASS Members who are or previously were employed by DEFENDANT
11 in California as non-exempt employees during the CALIFORNIA
12 LABOR SUB-CLASS PERIOD; and,

13 (i) Class treatment provides manageable judicial treatment calculated to bring
14 a efficient and rapid conclusion to all litigation of all wage and hour
15 related claims arising out of the conduct of DEFENDANT as to the
16 members of the CALIFORNIA LABOR SUB-CLASS.

17 **FIRST CAUSE OF ACTION**

18 **For Unlawful Business Practices**

19 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

20 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

21 44. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
22 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 43 of this
23 Complaint.
24

25 45. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.
26 Code § 17021.

27 46. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
28 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section

1 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
2 competition as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair
4 competition may be enjoined in any court of competent jurisdiction. The
5 court may make such orders or judgments, including the appointment of
6 a receiver, as may be necessary to prevent the use or employment by any
7 person of any practice which constitutes unfair competition, as defined in
8 this chapter, or as may be necessary to restore to any person in interest any
9 money or property, real or personal, which may have been acquired by
10 means of such unfair competition.

11 Cal. Bus. & Prof. Code § 17203.

12 47. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, Wage
14 Order 4-2001, the California Code of Regulations and the California Labor Code including
15 Sections 226(a), 226.7, 510, 512, 1194, 1197 & 1198, for which this Court should issue
16 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be
17 necessary to prevent and remedy the conduct held to constitute unfair competition, including
18 restitution of wages wrongfully withheld.

19 48. By the conduct alleged herein, DEFENDANT's practices are unlawful and
20 unfair in that these practices violate public policy, are immoral, unethical, oppressive,
21 unscrupulous or substantially injurious to employees, and are without valid justification or
22 utility for which this Court should issue equitable and injunctive relief pursuant to Section
23 17203 of the California Business & Professions Code, including restitution of wages wrongfully
24 withheld.

25 49. By the conduct alleged herein, DEFENDANT's practices are deceptive and
26 fraudulent in that DEFENDANT's uniform policy and practice fails to pay PLAINTIFF, and
27 other members of the CALIFORNIA CLASS, wages due for all hours worked, including
28 overtime hours worked, due to a systematic and uniform business practice of requiring
PLAINTIFF and CALIFORNIA CLASS Members to work off the clock that cannot be
justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

3 50. By the conduct alleged herein, DEFENDANT's practices are also unlawful,
4 unfair and deceptive in that DEFENDANT's employment practices cause the PLAINTIFF and
5 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 51. By and through the unlawful and unfair business practices described herein,
8 DEFENDANT has obtained valuable property, money and services from the PLAINTIFF and
9 the other members of the CALIFORNIA CLASS, including earned wages for all hours worked,
10 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
11 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
12 to unfairly compete against competitors who comply with the law.

13 52. All the acts described herein as violations of, among other things, the Industrial
14 Welfare Commission Wage Orders, the California Code of Regulations, and the California
15 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
16 and unscrupulous, are deceptive, and thereby constituted unlawful, unfair and deceptive
17 business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* DEFENDANT's
18 conduct is also deceptive in that DEFENDANT instituted a uniform company policy that
19 allowed DEFENDANT to require PLAINTIFF and CALIFORNIA CLASS Members to clock
20 out of DEFENDANT's timekeeping system and subsequently perform and complete post-shift
21 duties for DEFENDANT. As a result, PLAINTIFF and the other members of the
22 CALIFORNIA CLASS perform work without their time being accurately recorded and without
23 compensation for all hours worked, including overtime hours.

24 53. By the conduct alleged herein, DEFENDANT's practices are also unlawful,
25 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to
26 provide all legally required meal and rest breaks to the PLAINTIFF and the other members of
27 the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

28 54. Therefore, the PLAINTIFF demands on behalf of himself and on behalf of each

1 CALIFORNIA CLASS member, overtime wages and one (1) hour of pay for each workday in
 2 which an off-duty meal period was not timely provided for each five (5) hours of work, and/or
 3 pursuant to Cal. Lab. Code § 226.7(b), one (1) hour of pay for each workday in which a rest
 4 period was not timely provided.

5 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
 6 and do, seek such relief as may be necessary to restore to them the money and property which
 7 DEFENDANT has acquired, or of which the PLAINTIFF and the other members of the
 8 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
 9 unfair business practices, including earned but unpaid wages for all hours worked.

10 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
 11 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
 12 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
 13 engaging in any unlawful and unfair business practices in the future.

14 57. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
 15 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
 16 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
 17 As a result of the unlawful and unfair business practices described herein, the PLAINTIFF and
 18 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer
 19 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
 20 engage in these unlawful and unfair business practices.

21 SECOND CAUSE OF ACTION

22 **For Failure To Pay Regular and Overtime Wages**

23 **[Cal. Lab. Code §§ 510 & 1194, *et seq.*]**

24 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
 25 **Defendants)**

26 58. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
 27 CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs
 28

1 through 57 of this Complaint.

59. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all hours worked, including, work performed in excess of eight (8) hours in a workday and forty (40) hours in any workweek.

60. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

61. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

62. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1197 states that the payment of a less wage than the minimum wage fixed by the Industrial Welfare Commission is unlawful. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

63. DEFENDANT maintains a uniform wage practice of paying the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the true number of all hours worked, including overtime hours worked. As set forth herein, DEFENDANT's uniform policy and practice is to unlawfully and intentionally deny timely payment of wages due for all hours worked, including the overtime hours worked by the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

64. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that fails to correctly record all hours worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and

1 denied all compensation due to the PLAINTIFF and the other members of the CALIFORNIA
2 LABOR SUB-CLASS for all hours worked, including, the work performed in excess of eight
3 (8) hours in a workday and forty (40) hours in any workweek.

4 65. In committing these violations of the California Labor Code, DEFENDANT fails
5 to record all hours worked and consequently underpays the actual hours worked by PLAINTIFF
6 and CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT acted in an illegal attempt
7 to avoid the payment of all earned wages, and other benefits in violation of the California Labor
8 Code, the Industrial Welfare Commission requirements and other applicable laws and
9 regulations.

10 66. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
11 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not
12 receive full compensation for all hours worked, including overtime hours worked.

13 67. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
14 from the overtime requirements of the law. None of these exemptions are applicable to the
15 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, the
16 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
17 to a valid collective bargaining agreement that would preclude the causes of action contained
18 herein this Complaint. Rather, the PLAINTIFF brings this Action on behalf of himself and the
19 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
20 non-waiveable rights provided by the State of California.

21 68. During the CALIFORNIA LABOR SUB-CLASS PERIOD, the PLAINTIFF and
22 the other members of the CALIFORNIA LABOR SUB-CLASS are paid less for hours worked
23 that they are entitled to, constituting a failure to pay all earned wages.

24 69. DEFENDANT fails to correctly pay the PLAINTIFF and the other members of
25 the CALIFORNIA LABOR SUB-CLASS the wages for the hours they work in accordance with
26 1194, 1197 & 1197.1, even though the PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS are regularly required to work, and do in fact work, off
28 the clock hours as to which DEFENDANT fails to accurately record and pay as evidenced by

1 DEFENDANT's business records and witnessed by employees. DEFENDANT also fails to
2 accurately pay the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS overtime wages for the hours they worked which are in excess of the maximum hours
4 permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though the
5 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are regularly
6 required to work, and do in fact work, overtime hours as to which DEFENDANT fails to
7 accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT's
8 business records and witnessed by employees.

9 70. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
10 compensation to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
11 CLASS for the true number of hours they worked, the PLAINTIFF and the other members of
12 the CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
13 economic injury in amounts which are presently unknown to them and which will be ascertained
14 according to proof at trial.

15 71. DEFENDANT knew or should have known that the PLAINTIFF and the other
16 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for all their hours
17 worked, including their overtime hours worked. DEFENDANT systematically elected, either
18 through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as
19 a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated
20 this systematic scheme by refusing to pay the PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS for all hours worked, including correct payment for all
22 overtime hours worked at the applicable overtime rate.

23 72. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
25 all hours worked and provide them with the requisite compensation, DEFENDANT acted and
26 continues to act intentionally, oppressively, and maliciously toward the PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
28 disregard for their legal rights, or the consequences to them, and with the despicable intent of

1 depriving them of their property and legal rights, and otherwise causing them injury in order
2 to increase company profits at the expense of these employees.

3 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
4 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
5 interest, statutory costs, as well as the assessment of any statutory penalties against
6 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
7 statutes. To the extent compensation is determined to be owed to the CALIFORNIA LABOR
8 SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also
9 violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to
10 waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf
11 of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged
12 herein is willful, intentional and not in good faith. Further, the PLAINTIFF and other
13 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

14 15 **THIRD CAUSE OF ACTION**

16 **For Failure to Provide Accurate Itemized Statements**

17 **[Cal. Lab. Code § 226]**

18 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
19 **Defendants)**

20 74. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
21 CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs
22 1 through 73 of this Complaint.

23 75. Cal. Labor Code § 226 provides that an employer must furnish employees with
24 an "accurate itemized" statement in writing showing:

25 (1) gross wages earned,

26 (2) total hours worked by the employee, except for any employee whose compensation
27 is solely based on a salary and who is exempt from payment of overtime under
28 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare

1 Commission,

2 (3) the number of piecerate units earned and any applicable piece rate if the employee
3 is paid on a piece-rate basis,

4 (4) all deductions, provided that all deductions made on written orders of the employee
5 may be aggregated and shown as one item,

6 (5) net wages earned,

7 (6) the inclusive dates of the period for which the employee is paid,

8 (7) the name of the employee and his or her social security number, except that by
9 January 1, 2008, only the last four digits of his or her social security number or an
10 employee identification number other than a social security number may be shown on
11 the itemized statement,

12 (8) the name and address of the legal entity that is the employer, and

13 (9) all applicable hourly rates in effect during the pay period and the corresponding
14 number of hours worked at each hourly rate by the employee.

15 76. At all times relevant herein, DEFENDANT violated Cal. Lab. Code § 226 in
16 that DEFENDANT fails to provide an accurate wage statement in writing that properly and
17 accurately itemized all hours worked by the PLAINTIFF and the other members of the
18 CALIFORNIA LABOR SUB-CLASS, including overtime hours worked by these employees
19 and thereby also failed to set forth the correct amount of all wages earned by the employees,
20 including overtime wages.

21 77. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
22 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
24 expended calculating the correct amount of wages due for all hours worked, including overtime
25 hours worked, and the amount of employment taxes which were not properly paid to state and
26 federal tax authorities. These damages are difficult to estimate. Therefore, the PLAINTIFF and
27 the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated
28 damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and

one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for the PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- A) That the Court certify the Second and Third Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The wages of all terminated employees in the CALIFORNIA LABOR

1 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
2 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
3 and,

- 4 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
5 in which a violation occurs and one hundred dollars (\$100) per each member of
6 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
7 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
8 an award of costs for violation of Cal. Lab. Code § 226.

9 3. On all claims:

- 10 A) An award of interest, including prejudgment interest at the legal rate;
11 B) Such other and further relief as the Court deems just and equitable; and,
12 C) An award of penalties and cost of suit, as allowable under the law.

13 Neither this prayer nor any other allegation or prayer in this Complaint is
14 to be construed as a request, under any circumstance, that would result in
15 a request for attorneys' fees or costs available under Cal. Lab. Code §
16 218.5.

17 Dated: June 4, 2012

BLUMENTHAL, NORDREHAUG & BHOWMIK

18
19
20 By: 

Norman B. Blumenthal
Attorneys for Plaintiff

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: June 4, 2012

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: 

Norman B. Blumenthal
Attorneys for Plaintiff

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